

MINUTES

MONTANA SENATE 56th Legislature - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN JOHN HARP**, on April 9, 1999 at 3:30 P.M., in Room 3 Capitol.

ROLL CALL

Members Present:

Sen. John Harp, Chairman (R)
Sen. Bruce Crippen, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. Don Hargrove (R)
Sen. Mike Taylor (R)
Sen. Fred Thomas (R)

Members Excused: Sen. Tom A. Beck (R)
Sen. Vicki Cocchiarella (D)
Sen. Linda Nelson (D)
Sen. Chuck Swysgood (R)

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
Fredella D. Haab, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action:

CHAIRMAN HARP asked what was the issue?

SENATOR STEVE DOHERTY said the issue was whether the Senate's action in reconsidering its motion or its acceptances of the Free Conference Committee report on Senate Bill 200 and then subsequently appointing a new Free Conference Committee required a suspension of the rules to do so. His argument was that it did require a suspension of the rules because the second motion was

a motion to reconsideration. Our Rules, 50-90, state that a motion for reconsideration has to be made within one day of the disposition of the bill. More than one day had passed and my belief was that we needed to suspend the rules and then the proper motion would have been made and voted on by the Senate. It was an important point that we shouldn't disregard the rules. He realized that this was rather an extraordinary motion although **SENATOR DOROTHY ECK** could remember when this was done all the time.

CHAIRMAN HARP asked for other discussion on this issue.

PRESIDENT BRUCE CRIPPEN stated they would agree with you under normal circumstances except this was a totally new issue. We brought it back and all we needed was just a majority vote. He checked with the attorneys before he did that and afterwards he told you straight off why he did what he did. He still thought it was the correct ruling.

{Tape : 1; Side : A; Approx. Time Counter : 4.4}

CHAIRMAN HARP asked **SENATOR MIKE HALLIGAN** if he had something to add?

SENATOR HALLIGAN said if they are in uncharted territory and they have a motion like this to reconsider that looks like a motion to reconsider that we usually do, why wouldn't the general rules of construction require us to revert to the standard rule rather than staying on uncharted territory? Why don't we just follow a specific rule, just like this one may be extraordinary in a sense that it was after a bill has gone to the Governor and come back?

Greg Petesch, Legislative Services Division, stated that it was difficult to respond to because the motion as he understood it as it was made on the Floor was a motion to recall the bill from the Governor for further consideration. That motion having been made successfully - the only way you can have any further consideration on the bills was if you reconsider the adoption of the Free Conference Committee report. If you can't suspend the rules through a 2/3 vote if one was required then the motion to recall the bill from the Governor becomes meaningless. You do have a somewhat analogous situation in the Senate Rule and that was a motion to recall a bill from the House of Representatives and under 50-90 sub 3, that provides that the motion to recall the bill from the House constitutes notice to reconsider whatever the phrase notice means in that context. It says it shall be acted on as motion to reconsider. If you could only recall a bill from the House on the day after third reading, even if the House hadn't acted on it that to me would be an impediment to the

Senate's ability to correct things that weren't properly done in the Senate. So, as to why you wouldn't revert to the standard rule, He thought you could but He thought it was also since it was not addressed in the Rules and Mason's's doesn't have a vote requirement on this. He couldn't give them a definitive answer.

PRESIDENT CRIPPEN stated they all agreed it was appropriate to be able to recall back from the Governor. Does everyone agree with that? If we should hold that it requires 2/3 to continue on, that essentially makes the ability on the part of the Legislative body to recall from the Governor would put the majority in a position of being dictated more by the will of the minority. He thought it lent itself to treating that ability somewhat lightly. It wouldn't have the full force of effect that he thought it should have to rule otherwise. He thought wouldn't really go along with the intention of why that was in Mason's. Mason's specifically does not address that issue at all. Had they felt, the drafters of Mason's Rules, that the issue should be addressed and that the 2/3 would be a part, they would have put it in there by implication.

SENATOR DOHERTY said we should remember that this was an item that has not been used, was not envisioned as being used or rather not in regular use. It was not in regular use in my memory or anybody else's memory.

{Tape : 1; Side : A; Approx. Time Counter : 9.7}

CHAIRMAN HARP stated that **SENATOR ECK** mentioned it had been used. Wasn't it a sad thing that institutional knowledge with term limits coming and the ability to function as a legislative body separate from the executive branch was really going to be in a defensive mode in the future. It was great to see the legislature take an issue and direct what they have been talking about all along - about our economy and different things and the importance of such an issue.

SENATOR HALLIGAN said her comments were made before the '72 Constitution. They didn't have amendatory veto then. The point was this was a highly unusual and a radical departure from the rules. It was done and he thought that if Mason's does not address it, it was an indication that Mason's does not envision it as being a standard operating procedure for a Legislature. There are two ways to deal with bills - you sign, veto them or you amendatory veto them. That wasn't done in this instance. The question was by stating that to require a suspension of the rules after the initial motion was made would treat lightly the potential to recall a specific bill from the executive. He

didn't think it had merit. The reason why it doesn't have merit was that it presupposes that the Legislature would not of one mind view such an issue as an extraordinary one needing corrective action. Needing corrective action in enrolling, or engrossing or a technical flaw or something else that would automatically get a 2/3 majority almost in any instance. Requiring suspension of the Rules simply recognizes that for those issues of procedure or non substantive issues when dealing when an extraordinary measure the realistic thing to do was to suspend the Rules and get it done. He thought suspension of the Rules was designed to prevent any kind of misuse or potential misuse of this extraordinary measure when you are dealing with a matter of substance. That was the reason for raising the issue. He thought as a matter of procedure you would have no problem - if there was a glitch, a comma, or we printed the wrong number on the bill. When you are dealing with a matter of substance and policy, he thought this kind of procedure was a dangerous precedent.

{Tape : 1; Side : A; Approx. Time Counter : 13.5}

PRESIDENT CRIPPEN stated that when you recall one back whether It was for a comma or a glitch and it was back before you, do you have to opportunity at that time to only repair the comma or the glitch or do you have it in front of you so you can do as you shall? Under those rules of getting it back, you could do it either way or if you didn't have the motion and you just brought it back would you agree that you could do anything with it? Even if the original intent was to change the comma? Once you have it in your possession, no longer the Governor's, it's yours, you can do anything with it. In our Rules how often do we provide for more than a majority vote on an issue? They are listed specifically. Why are they listed specifically? Because they are extraordinary or there was a reason. If they are not listed specifically, it would follow that only a majority was necessary. Would you agree with that? Then it was just a simple step across to Mason's which was all Mason's was - an extension of our Rules. The same theory of practical application of the Rules apply that unless there was specific statements stating that under certain situations as we do in our regular Rules we require more than a super majority one could make the argument very well, as I did, that was all it required was a simple majority.

{Tape : 1; Side : A; Approx. Time Counter : 16}

SENATOR DOHERTY thought that if the issue was that but if the issue was do we need to suspend the Rules to get the bill in front of us in order to do something with the bill. The Rule was

clear on suspension of the Rules or on suspension of the Rules requiring the 2/3 vote.

SENATOR HALLIGAN said in talking to **Greg Petesch** about a specific issue, the reason why and whether the majority was Democrat or Republican or a mix of both passing a bill down to the Governor was obviously the last step in the process. You had better damn well know what you are doing when you do that. You may end up with a 2/3 vote on the way back if you don't do the right thing. It gives the minority control potential whether it was a mix Democrat and Republicans and it makes you think before you take that final step and send it to the executive branch. You may be able to do the motion to withdraw but you are going to have to have a 2/3 vote to bring it back again because it was not covered there and you assume it was covered under the 2/3 rule. So that was where he thought it really makes the majority say, boy we support the bill, this better be right, before we send it down there because we could suffer the consequences when it comes back.

CHAIRMAN HARP stated he is going to go ahead and close and then **SENATOR GROSFIELD** I would like a motion to adjourn. Obviously this is an unusual motion but these are unusual times in Montana when you look at our jobs and income. We have been fairly focused since the beginning of the Session and we didn't do this lightly and he really thought it was a matter for the Legislature to reconsider this bill and that was why we asked the Governor to allow the bill back. **SENATOR DOHERTY** you make a good point as far as looking at the Rules as 50-90 sub 3 and he thought potentially with such an action if future Rules Committee want to address this thing but it was certainly within the rights of Mason's. Our first motion certainly was in order. He was extremely careful on the Senate Floor not to mix the two. The motion to reconsider the Free Conference Committee and then later a motion to reappoint, because obviously he would not have made the motion if he thought he was violating any of the Senate Rules. Particularly being the chairman of the Senate Rules Committee. He thought that was important and at what point does a Legislature Branch have an opportunity to recall a bill? It was an interesting issue and one that we have talked about today and he thought there was one other thing that if you look at section 756 of recalling legislation from the executive, item #3, the vote upon a final passage of a bill recalled from the Governor may be reconsidered at any time after its return from the House having such bill in its possession. That certainly allows us right up to when we adjourn to have this ability to do that. We expect a very active debate on this bill after it comes back from the Conference Committee. **SENATOR DOHERTY** I know that you will be coming back and we always fine tune these rules as

things change as things change and try to make them perfectly clear to everything that was done here in the Senate, both with the motion to take the bill back at the request of the Legislature from the executive branch and also the ability to do this at any time up until the time we adjourn. It was certainly in order!

Motion/Vote: SEN. GROSFIELD moved ADJOURNMENT. Motion carried unanimously.

ADJOURNMENT

Adjournment: 3:51 P.M.

SEN. JOHN HARP, Chairman

Fredella D. Haab, Secretary

JH/fdh

EXHIBIT (rus77aad)